

DETAILED ACTION

1. This office action is responsive to the amendment filed on 1/26/2010. As directed by the amendment: claims 1-9 have been cancelled and claims 10-16 have been added. Thus, claims 10-16 are presently pending in this application.

Claim Rejections - 35 USC § 112

2. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

3. In re Claim 1, the claim language recites “the applicator is fixed to the cup only over portions of the contact surface between the applicator and the cup, leaving free the predetermined break point” (Last 4 Lines). The Examiner can find no support in the specification for the latter portion of the cited limitation.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 10-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoyt et al. (US Patent 5,316,400).

6. In re Claim 10, Hoyt discloses a deep-drawn packaging comprising: two deep-drawn cups 20/21 ("receptacle units"; Fig.'s 1-2; Column 6, Lines 4-5); a sealed-on cover film 14 ("backing sheet"; Fig.'s 2-3; Column 6, Line 3); and an applicator 97 (Fig. 11; Column 11, Line 21-22) for applying a liquid medium (Abstract). The applicator is fixed to the cups by sealing across a contact surface (See Column 11, Lines 23-25 and Column 8, Lines 27-31) and is made of a material that is permeable to the medium ("sponge"; Column 11, Lines 25-26 and 33-36) and covers a dispensing opening of the packaging (Column 11, Lines 30-34), to which the applicator is connected in partial areas of the contact surface 50/51 (Fig. 11; Column 11, Lines 25-28). The dispensing opening is defined by a predetermined break point 72 ("score line"; Fig.'s 1-3; Column 6, Line 36) of the two cups and the applicator is fixed to the cups only over portions of the contact surface between the applicator and the cups (it being understood that the applicator can be "fixed to the cups" only over portions of the contact surface between "the applicator and the cups"), leaving free the predetermined break point (See Fig. 11; it being shown that the applicator 97 is not sealed to the dispenser 10 at a void aligned with the opening).

7. In re Claims 11-16, Hoyt further discloses the packaging has two nozzle-shaped sections 60/61 ("extension members"; Fig.'s 1-2; Column 6, Lines 13) in which the predetermined break point 72 (Fig.'s 1-2) is disposed. The predetermined break point forms separate break-off tips for the two nozzle-shaped sections (Fig.'s 1-2). The

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applicator 97 (Fig. 11) consists of absorbent material (Column 11, Lines 25-26 and 33-36), which is a foamed material ("plastic foam"; Column 11, Lines 33-34). The applicator has above the dispensing opening, a perforation or delivery channel, in the form of punching ("pores"; Column 11, Lines 36-40; it being understood that a pore is a perforation, and also that a delivery channel formed by punching is equivalent in structure to a pore), extending to outside the packaging.

Response to Arguments

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan A. Varnum whose telephone number is (571) 270-7853. The examiner can normally be reached on Monday - Friday, 9:00 AM - 5:00 PM EST.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. A. V./
Examiner, Art Unit 3751

/Gregory L. Huson/
Supervisory Patent Examiner, Art
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